IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 99/2006

Shree Tirumala Services through
its Proprietor Shri M. Channaiah & anr ..... Petitioners.

V/s.

M/s. Goa Shipyard Ltd., represented
through its Company Secretary and anr. ..... Respondents.

Mr. A. V. Nigalye, Advocate for the petitioners.

Mr. M.S. Usgaonkar, Senior Advocate with Mr. Sudesh Usgaonkar, Advocate for the respondents.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date : 1st May, 2006.

P.C.

By this petition, the petitioners challenge the communication dated 9th July, 2004 issued by the respondents by which the petitioner No.2 has been black-listed and his name has been removed from the list of approved suppliers/contractors and consequently, he has been banned from having any business dealings with the respondent No.1. Petitioner No.2, the proprietor of petitioner No.1 is a labour contractor and the respondent No.1 is a Company incorporated under the companies Act and is a Government

of India undertaking engaged in construction, building, development and repairs of ships and vessels basically for defence purposes. In the year 1993, the petitioners were awarded contract for cleaning work and maintenance of ships and allied works for a period of two years. The said contract was extended till February, 1996. The C.B.I. investigated into the illegalities/irregularities committed by the petitioners and on 3.8.2001 filed charge-sheet against the petitioner No.2 along with certain Officers of respondent No.1 under Section 120 (B) read with 420 of I.P.C. and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988. In the charge-sheet, it was alleged that the petitioners in connivance with the Officers of respondent No.1 cheated respondent No.1 by making false claims in respect of 45 labourers and workers for overtime duty. Pursuant to the charge-sheet, a criminal case has been registered and sessions case is pending before the Special Judge, at Margao.

On 26/2/2004, respondent No.1 addressed a communication to the petitioners black-listing them from the list of approved contractors of respondent No.1, thereby debarring them from having any business dealings with respondent No.1 in future. The said communication was addressed on account of above mentioned irregularities committed by the petitioners, resulting in huge monetary loss to respondent No.1 during the period of contract. By reply dated 3.3.2004, addressed to respondent No.1, the petitioners denied having committed any irregularities, or having

caused any loss to respondent No.1. Thereafter, the petitioners filed Writ Petition No.122/04 before this Court challenging the communication dated 26/02/2004 since the petitioners were not issued the tender forms in respect of certain notices inviting tenders. Before this Court, a statement was made on behalf of respondent No.1 that the communication dated 26/02/2004 was being withdrawn and accordingly, the petition was disposed of. Thereafter, respondent No.1 issued a show cause notice dated 31.3.2004 to the petitioner No.1 calling upon petitioner No.1 to show cause as to why the firm should not be removed from the approved list of suppliers for respondent No.1 and as to why it should not be banned for having any business dealings with respondent No.1. By reply dated 7.4.2004, the petitioners denied the allegations made in the show cause notice. Thereafter, by communication dated 8.5.2004 petitioner No.2 was informed by the General Manager of respondent No.1 that as decided and directed by the competent authority, the business dealings of respondent No.1 with petitioner No.1 would stand suspended with immediate effect till the outcome of the case pending before the Special Judge, South Goa, Margao. The said communication was challenged by filing Writ Petition No.247/04 in this Court. By Judgment dated 30.6.2004, this Court set aside the order mainly on the ground of non-application of mind to the material produced by the CBI and leaving its discretion to another body. However, this Court held that respondent No.1 shall be at liberty to take the decision

afresh, without issuing any show cause notice or accepting the reply and the decision should be taken by the competent authority within ten days from the date of the Judgment. Pursuant to the said Judgment, by communication dated 9.7.2004, the General Manager of respondent No.1 informed the petitioners that the competent authority had passed the following Order :

> "You stand black-listed and your name stands removed from the list of approved suppliers/contractors and you are banned of having any business dealing with us with immediate effect".

The decision taken by the competent authority has been challenged by filing the present petition.

2. In the petition, although the petitioners have taken several grounds, Mr. Nigalye, the learned Counsel appearing on behalf of the petitioners urged two grounds in support of the petition. They are: (1) the order black-listing the petitioners has been passed by the Chairman and Managing Director without any authority inasmuch as the order black-listing the petitioners should have been passed by the Board of Directors of respondent No.1; and (2) the order black-listing the petitioners discloses total non-application of mind by the Chairman and Managing Director and he has only put the remarks "OK" on the draft prepared by some other Officer.

According to Mr. Nigalye, the order black-listing the petitioners could have been passed only by the Board of Directors of respondent No.1 and the respondent No.2 had no authority to pass the impugned order. This position has been disputed by the respondents. Article 139 of the Articles of Association, inter alia, provides that subject to the restrictions contained in Section 292 of the Act, the Board may delegate any of their powers to Committees of the Board consisting of such member or members of its body as it thinks fit. The respondents have also produced the Minutes of Meeting dated 23.3.2004, in which the powers to appoint contractors, services of labourers have been delegated to the Chairman and Managing Director under the articles of Association of the Company. That being the position, we do not find any merit in the submission of Mr. Nigalye that the respondent No.2 had no authority to pass the impugned order.

3. In so far as the next ground is concerned, the petitioners have stated as follows in paragraph 24-A of the petition :

> " The Petitioners state that after the Petitioner No.2 received the copy of the affidavit-in-reply of the Respondent No.1, he made further inquiries and he learnt that the papers/matter of the said order were placed before the Chairman and Managing Director of the Respondent No.1 by his subordinate officers, through the computer

> network of the Respondent No.1 and the said Chairman and Managing Director merely put a remark thereon as “O.K.”.”

The averments made in this para have been disputed by the respondents in affidavit-in-reply filed on their behalf. The petitioners have not placed any material in support of the allegations made in para 24-A of the petition. Perusal of the impugned order clearly discloses that the respondent No.2 after considering all the relevant materials had passed the impugned order black-listing the petitioners from the list of approved suppliers/contractors. We are, therefore, unable to accept the statement made by the learned Counsel for the petitioners in support of the second ground. In the backdrop of the above discussion, we do not find any substance in both the grounds urged in support of the petition. Therefore, the challenge to the impugned order fails.

4. Mr. Nigalye submits that the petitioners have made representation dated 3.2.2006 seeking withdrawal of the order dated 9th July, 2004 and that the respondent No.2 be directed to decide the said representation. We are not inclined to accede to the request of the petitioners since we have negatived the challenge of the petitioners to the order dated 9th July, 2004 on merits.

5. In the result, therefore, the petition stands rejected with no order as to costs.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.